Montana Fish, Wildlife & Parks

Administrative Rules for River Recreation Management

NEW RULE I (ARM 12.11.401) RIVER RECREATION USE: DEFINITIONS

(1) "Allocation" means distributing limited use opportunities when a rationing system is in place.

(2) "Fixed allocation" means members of a rationed user group or groups do not compete equally for limited opportunities to use a river.

(3) "Management plan" means a plan developed using the processes described in this subchapter for management of recreational use on a river or group of rivers.

(4) "Non-fixed allocation" means 100% of the available use opportunity is allocated to individual river users or parties of river users and not to river service providers.

(5) "Ration" means to regulate use intensity by limiting the amount of use on a river. Rationing requires users to obtain a permit to recreate on a river or requires river service providers to obtain authorization to conduct business on a river. Limitation on the use of a river may apply to one or more user groups and may not necessarily apply to all user groups. To qualify as a rationing strategy, the supply of permits or the amount of authorized use by river service providers must be limited.

(6) "Restrict" means to regulate when and where the public or river service providers can recreate on a river, or the types of recreation that are allowed.

(7) "River service provider" means a business or person that, for monetary or other consideration, provides services on publicly accessible rivers in Montana. This includes angling outfitters licensed by the state of Montana and non-angling river service providers that are not licensed by the state of Montana.

(8) "River user" is someone who uses a river and is not acting as a river service provider.

(9) "River use day" is equivalent to one person recreating on a river for all or part of one day.

(10) "Rule" or "rules" mean regulations pertaining to river recreation adopted through the Montana Administrative Procedure Act (MAPA).

AUTH: 87-1-301, 87-1-303, MCA
IMP: 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE II (ARM 12.11.405) POLICY STATEMENT CONCERNING RIVER RECREATION RULES (1) These rules apply to the process of developing, adopting, amending, or repealing management plans or rules that address river recreation. These rules do not apply to fishing seasons, limits, or regulations that the commission will

continue to adopt as biennial or annual rules under MAPA's exceptions.

(2) The purpose of these rules is to provide guidance to the commission, the department, and department-appointed citizen advisory committees in the management of recreation on rivers. These rules seek to promote management of river recreation that provides a full variety of quality recreation for a diverse public and protects natural resources in rivers and on adjacent uplands. These rules also provide guidance for addressing social conflict on rivers.

(3) The general premise of these rules is that the public prefers to recreate on rivers without controls on their recreational experience, other than regulations that are necessary for managing aquatic resources, such as fishing regulations. Educating the public about river recreation issues can lead to modified behavior on rivers and the department can use education as a nonregulatory method to address social problems on rivers. The department should develop strategies for providing river information to all sectors of the recreating public.

(4) The demand on the natural resources and the social experience will continue to grow, and the best approach is a balance between quality of experience and unrestricted use of a limited resource. On any river or stream, there may be a time and a need for management intervention in order to maintain the quality of the river resources and the quality of the recreational experience. The quality of the river resource should be protected as the first and foremost priority.

(5) Further, the general premise of these rules is that if it becomes necessary to manage use on a river, the public prefers that less-restrictive management intervention be tried before proceeding to more-restrictive management intervention, and that rationing of use is the most restrictive form of management intervention.

(6) Individuals appointed to serve on a citizen advisory committee, river users, and those affected by river recreation shall be given an opportunity to be full and integral partners in the development of proposed management plans or rules. Participation of all interested parties is vital when developing management plans.

(7) Planning and management of Montana's river systems should provide for and conserve a full variety of recreation experiences and assure that river recreation historically enjoyed by people in Montana is recognized.

(8) Nonresidents are an important part of the state's tourism economy and rivers are an attraction to visitors. Nonresidents should have reasonable and equitable opportunities compared to other recreational users to enjoy Montana's resources. "Reasonable and equitable" as applied to nonresidents means recreational use that fairly considers the interests of all types of recreational users, and is not intended to mean that each type of recreational user must have the exact same share of use in terms of the timing, amount, and location of use.

(9) River service providers are an important industry in Montana and should be regulated. There are differences in management considerations between river service providers and

private (nonguided) users. Management plans need to provide opportunities for river service providers to compete for the business of paying customers. Management processes should encourage viable and diverse types of commercial services.

(10) Partnerships with other agencies that lead to improved management of the river resources and better services to the public are encouraged.

AUTH: 87-1-301, 87-1-303, MCA
IMP: 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE III (ARM 12.11.410) RIVER RECREATION MANAGEMENT PLANS AND RULES GENERALLY (1) The highest priority of a management plan is providing protection for the following resources:

(a) the quality of the fisheries;
(b) wildlife;
(c) water;
(d) riparian habitat; and
(e) other natural resources in or along the river.

(2) Management plans or rules must not allow unlimited recreation to compromise long-term conservation.

(3) Management plans and rules must maintain a balance between quality of experience and unlimited quantity of experience.

(4) Management plans and rules must be:

(a) technically and socially feasible;
(b) legal;
(c) affordable;
(d) measurable;
(e) enforceable; and
(f) reasonable to administer.

(5) Management plans must identify the potential or existing impact of recreation on natural resources and provide mitigating actions that could be taken to address concerns.

(6) When possible, the development of management plans must be coordinated with the planning processes of state, tribal, and federal agencies having jurisdiction over a river or the reach of a river.

(7) Management plans and rules may not differentiate based solely on the residency of the river user unless the commission determines the best available data indicate that the amount of use by residents or nonresidents is a primary contributor to an identified problem.

(8) Nothing in this subchapter shall prevent the department, with the concurrence of the commission, from amending or repealing a management plan and the commission from amending or repealing rules as needed.

AUTH: 87-1-301, 87-1-303, MCA
IMP: 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE IV (ARM 12.11.415) RIVER RECREATION MANAGEMENT PLANS AND RULES: DEPARTMENT RESPONSIBILITIES (1) The department, using existing information, shall evaluate the social and biological conditions on rivers and identify those rivers where further

analysis and planning may be needed in order to prevent or resolve social conflicts.

(2) The department shall implement Title 75, chapter 1, MCA, the Montana Environmental Policy Act (MEPA) when developing a management plan or when proposing rules for a specific river.

(3) When developing a river recreation management plan for a specific river, the department shall conduct an analysis and decision-making process that complies with MEPA and includes collection and analysis of data, appointment of a citizen advisory committee, development of alternatives, and public review and comment.

(4) The department shall develop management plans and recommend rules to the commission based on the following:

(a) the values and input of the public;

(b) best available biological information;

(c) best available social information;

(d) best available economic information;

(e) recommendations of the citizen advisory committee;

(f) input and advice from the commission; and

(g) MEPA analysis.

(5) Following the adoption of a management plan or rules, the department to the best of its ability shall assess the effectiveness of management actions considering the information and analysis developed in (4) of this rule. Based on the assessment, the department, with the concurrence of the commission, may amend or repeal a management plan and the commission may amend or repeal rules as needed.

(6) The department shall include other state, tribal, and federal agencies having jurisdiction over a river or the reach of a river when developing management plans and rules.

AUTH: 87-1-301, 87-1-303, MCA
IMP: 87-1-201, 87-1-301, 87-1-303, MCA

<u>NEW RULE V (ARM 12.11.420) RIVER RECREATION MANAGEMENT PLANS AND RULES: COMMISSION RESPONSIBILITIES</u> (1) When concurring in a management plan or when adopting, amending, or repealing rules for a river, the commission shall consider the following:

(a) recommendations of the citizen advisory committee;

(b) public input;

(c) the best available biological information before the department;

(d) the best available social information before the department;

(e) the best available economic information before the department;

(f) the department's MEPA analysis; and

(g) any existing river management plan for the river.

(2) There is not a requisite amount of information that the commission shall consider before it is able to make a river recreation management decision.

(3) The commission shall adopt river recreation rules according to MAPA.

(4) Nothing in this subchapter shall prevent the commission from making timely river recreation decisions necessary to address emergency biological conditions, such as drought, or issues of public safety.

AUTH: 87-1-301, 87-1-303, MCA
IMP: 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE VI (ARM 12.11.425) CREATION OF CITIZEN ADVISORY COMMITTEES

(1) The department shall establish a citizen advisory committee when developing a river recreation management plan or when recommending river recreation rules to the commission. The department shall also establish a citizen advisory committee to consider changes to river recreation management plans or to consider amendments to river recreation rules if the proposed changes or amendments are anticipated to be of significant enough interest to the public to benefit from the participation of a citizen advisory committee.

(2) Members of the citizen advisory committee serve by appointment of the director. In considering appointments the director, through a public process, shall:

(a) identify interests and stakeholders that will be affected by the proposed management plan or regulation; and

(b) appoint members to the committee that represent the identified interests, stakeholders, and perspectives, both locally and statewide.

AUTH: 87-1-301, 87-1-303, MCA
IMP: 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE VII (ARM 12.11.430) RIVER RECREATION MANAGEMENT PLANS AND RULES: CITIZEN ADVISORY COMMITTEE RESPONSIBILITIES (1) The purpose of the citizen advisory committee is to advise the department and the commission on the management of recreation on a river, including the development of river recreation management plans and river recreation rules to address social conflicts;

(2) The citizen advisory committee responsibilities are the following:

(a) represent the interests of those affected by river recreation management;

(b) articulate a vision for the river and set goals and objectives in quantitative and qualitative terms that are intended to achieve the vision;

(c) assess river recreation information and existing social and biological conditions on the river;

(d) identify desired or acceptable social and biological conditions for the river;

(e) identify undesired or unacceptable social and biological conditions for the river that would trigger management actions in order to achieve desired or acceptable social and biological conditions;

(f) recommend a range of management actions from less restrictive to more restrictive that should be taken based on the

severity of the undesired or unacceptable social and biological conditions;

(g) recommend mechanisms and a timetable for monitoring and evaluating river recreation management plans and river recreation rules; and

(h) submit final recommendations to the department and the commission.

(3) The department shall provide comments to the citizen advisory committee as to whether its recommendations are technically feasible, legal, affordable, measurable, enforceable, and reasonable to administer.

AUTH: 87-1-301, 87-1-303, MCA
IMP: 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE VIII (ARM 12.11.435) RESTRICTING OR RATIONING RIVER USE (1) The commission shall make the final decision on whether or not to restrict or ration river use and the adoption of rules for doing so.

(2) When determining how a river should be managed, the commission shall consider management methods in the following order:

(a) nonrestrictive management methods;

(b) restrictive management methods; and

(c) rationing methods.

(3) Under conditions or circumstances identified by the commission, the commission may implement rationing management methods before or simultaneously with restriction management methods or implement restrictive management methods before or simultaneously with nonrestrictive management methods.

(4) When developing a management plan or recommending rules to the commission:

(a) the department shall work with a citizen advisory committee to identify the problems and the social conditions that would trigger restrictions or rationing of use; and

(b) the management plan or rule recommendations must describe how restricting or rationing use would address a particular problem.

(5) If rationing is proposed and it becomes necessary to allocate opportunities to use or conduct business on a river, the department, working with the citizen advisory committee, shall recommend an allocation system to the commission. The department may consider all types of allocation systems including fixed systems, nonfixed systems, and variations of these two types.

AUTH: 87-1-301, 87-1-303, MCA
IMP: 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE IX (ARM 12.11.440) FIXED ALLOCATION (1) If a fixed allocation system is proposed for a river, the department and the commission shall seek input from a citizen advisory committee and the general public regarding the following:

(a) the amount of use that would be allocated to each user group; and

(b) the methods used to distribute the use.

(2) If use is allocated to river service providers, the department and the commission shall seek input from a citizen advisory committee, river service providers, and the general public regarding the following:

(a) the method used to determine which individual river service providers would be allocated use; and

(b) the amount of use they would receive.

(3) If a fixed allocation system is adopted for a river, the commission may change the amount of use allocated to a service provider and no property right attaches to that use.

AUTH: 87-1-301, 87-1-303, MCA
IMP: 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE X (ARM 12.11.445) NONFIXED ALLOCATION (1) If nonfixed allocation is proposed for a river, the department and the commission shall seek input from a citizen advisory committee and the general public regarding the following:

(a) overall amount of use that would be allocated to individual river users or parties of river users; and

(b) the methods used to distribute the opportunities to use the river.

(2) When river allocation is nonfixed:

(a) service providers and their employees may not apply for opportunities to use the river for any reason other than to use the river as a private user; and

(b) the commission may consider exceptions for a nonfixed allocation that allows a river service provider to submit an application form on behalf of a known client as long as that client is present at the time of use.

AUTH: 87-1-301, 87-1-303, MCA
IMP: 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE XI (ARM 12.11.450) TRANSFERRABILITY OF RIVER USE DAYS

(1) The sale or transfer of a licensed or nonlicensed river service provider business and the transfer of river use days shall comply with 37-47-310(4), MCA, and shall not be prohibited as long as all legal requirements are fulfilled.

(2) Use of any transferred river use days is subject to change pursuant to rules adopted by the commission.

(3) No property right attaches to the transferred river use days.

AUTH: 87-1-301, 87-1-303, MCA
IMP: 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE XII (ARM 12.11.455) RIVER RECREATION MANAGEMENT PLANNING MANUAL (1) Upon adoption of these rules, the department must develop a river recreation planning manual that provides details on implementation of the analysis and decision-making framework in conjunction with MEPA and MAPA. The manual will incorporate the recommendations of the river recreation

advisory council as expressed in their final report of July 10, 2003, including the guiding principles.

(2) The river recreation planning manual must provide direction to the department on the following elements of the analysis and decision-making framework:

(a) prioritizing river recreation planning and management needs;

(b) collecting and analyzing data;

(c) appointing and working with a citizen advisory committee;

(d) incorporating the recommendations of a citizen advisory committee into a management plan; and

(e) implementing, monitoring, and evaluating a management plan or rules.

(3) The department and its citizen advisory committees must consider the river recreation planning manual when developing a river recreation management plan or recommending river recreation rules to the commission.

AUTH: 87-1-301, 87-1-303, MCA
IMP: 87-1-201, 87-1-301, 87-1-303, MCA

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Certified to the Secretary of State October 25, 2004

Public Comments and Commission Responses

The following comments were received and appear with the commission's responses:

Topic: Positive Features of the Rules

COMMENT 1: In addition to public comments that offered overall support for the proposed rules, some people identified specific features of the rules that they particularly liked. Some people supported the ability of the commission to empower local citizen advisory committees on an as needed basis in particular watersheds. One person commented that it is important to recognize that as it stands today the commission has all the authority it needs to regulate the social conditions on rivers and that these rules set up a procedure that the commission has to follow, and this procedure eliminates some of the discretion that the commission currently has when making decisions. One person commented that the rules advocate for a partnership approach with other agencies and this should help to address concerns about water quantity and impacts to recreation and agriculture. Some people commented that new rules III (ARM 12.11.410), IV (ARM 12.11.415), V (ARM 12.11.420), and VI (ARM 12.11.425) all mention that decision makers have to have good data and that this is very important. Some people commented that they appreciate that the proposed rules allow for flexibility in order to recognize the differences between rivers. One person commented that requiring the commission to conduct rulemaking according to the Montana Administrative Procedure Act (MAPA), and requiring the department to conduct an analysis according to the Montana Environmental Policy Act (MEPA), is the right way to go because it ensures public input and this leads to good decisions. Some people commented that they are in favor of the nonresident section of the new rules. One person recommended that the commission adopt all aspects of new rule II (ARM 12.11.405), as written without changes. One person commented that they agree wholeheartedly with new rule II(3) (ARM 12.11.405(3)) that reads, "The general premise of these rules is that the public prefers to recreate on rivers without controls on their recreational experience, other than regulations that are necessary for managing aquatic resources, such as fishing regulations." One person commented that the process outlined in these rules is the "mirror image" of the process that was used in the development of the Big Hole River Recreation Management Plan. This person thought this process worked well in the Big Hole and should work well in other river basins. Some people commented that they agreed that resource protection is the single highest consideration in development of recreation plans, and they supported the contention that management plans or rules must not allow unlimited recreation to compromise long-term conservation.

RESPONSE: The commission appreciates hearing comments on features of the rules that people believe will help to maintain or improve river recreation management on rivers in Montana.

Topic: Definitions

COMMENT 2: One person recommended that the definition of a "river service provider" be amended so there are two categories: (1) angling service providers, and (2) non-angling service providers. This would aid in identifying and tracking those river service providers that are presently licensed and those that are not.

RESPONSE: The proposed rules apply to all types of river service providers, and therefore the commission thinks it is unnecessary to create two categories of providers. This type of distinction could be considered as a part of a river recreation management plan where it might be beneficial to distinguish between angling and non-angling service providers.

Topic: Restrictions, Rationing, Allocation

COMMENT 3: One person commented that if there are a lot of rules and/or restrictions it would be hard for people to spontaneously recreate on a river.

RESPONSE: The commission recognizes that the presence of rules and/or restrictions could affect some people's opportunity to spontaneously recreate on a river. For this reason, new rule II(3) (ARM 12.11.405(3)) states, "The general premise of these rules is that the public prefers to recreate on rivers without controls on their recreational experience, other than regulations that are necessary for managing aquatic resources, such as fishing regulations."

COMMENT 4: The commission received numerous comments on residency, outfitting, and whether or not Montana residents should have preference over nonresidents and river service providers if it becomes necessary to restrict or ration use. Some people recommended that the commission, if it becomes necessary to restrict or ration use on a river, establish a hierarchy where the citizens of Montana would be restricted or rationed only after the river service providers and nonresidents have been restricted or rationed. They reasoned that residents of Montana should be given priority over nonresidents because residents pay taxes here and endure lower wages than people living in other areas of the country. They also reasoned that river service providers are profiting from a public resource, and therefore that sector of use should be restricted before the noncommercial sector of use is restricted. Some people recommended that the commission adopt a rule that states, "A person's or persons' decision to operate a commercial venture on publicly held waters should not interfere, limit, or affect in any way the private public's right to access or legally recreate on those waters."

Of those opposed to a hierarchy approach and/or restrictions based on residency, some people recommended that the department and the commission not differentiate between a resident and a nonresident, or between guided and nonguided users. These

individuals believed that restrictions on use should apply to everyone, not just outfitters and nonresidents. One person commented that if it is crowded, it is crowded for everyone. Some people commented that nonresidents contribute a significant amount of money to the department's budget and the department should be concerned about placing restrictions on them. One person recommended that the department consider the court cases in Arizona and the 9th Circuit Court, Conservation Force, Inc. v. Manning, having to do with nonresidents because it could have implications for Montana.

RESPONSE: The commission points out that the River Recreation Advisory Council deliberated for considerable time on the topics of residency and commercial use. The commission believes that the rules reflect the council's carefully crafted words on these issues. The council agreed that planning and management of Montana's river systems should provide for and conserve a full variety of recreation experiences and assure that river recreation historically enjoyed by people in Montana is recognized (new rule II(7) (ARM 12.11.405(7)). The council also agreed that nonresidents are an important part of the state's tourism economy and rivers are an attraction to visitors. They agreed that nonresidents should have reasonable and equitable opportunities compared to other recreational users to enjoy Montana's resources. They agreed that "reasonable and equitable" as applied to nonresidents means recreational use that fairly considers the interests of all types of recreational users. Reasonable and equitable is not intended to mean that each type of recreational user must have the exact same share of use in terms of the timing, amount, and location of use (new rule II(8) (ARM 12.11.405(8)). The council agreed that river service providers are an important industry in Montana and should be regulated. They agreed that there are differences in management considerations between river service providers and private (nonguided) users. They agreed that management plans need to provide opportunities for river service providers to compete for the business of paying customers and that management plans should encourage viable and diverse types of commercial services (new rule II(9) (ARM 12.11.405(9)). The commission carefully considered the council's recommendations and the public's comments on these issues. The commission points out that the council did not recommend a hierarchy approach where Montana citizens would automatically be given priority over commercial and nonresident use of rivers should it become necessary to restrict or ration use. Rather, the council recommended the use of an analysis and decision-making process and the involvement of a citizen advisory committee, which together would yield river recreation management decisions that are based on the conditions present on a river and the interests of the public. The commission points out that the rules would allow for differentiation based on residency if the best available data indicate that the amount of use by residents or nonresidents is a primary contributor to an identified problem. The rules would also allow restrictions on river service providers in order to meet the objectives of a management plan. The commission believes that the rules, when

viewed as a whole, make it clear that arbitrary discrimination against residents, nonresidents and river service providers is not acceptable. Rather, the decision to restrict or ration users, including residents, nonresidents, and river service providers, should be an informed decision that is based on the conditions on a river and the interests of the public. The commission trusts that the council's recommendations, which are reflected in these rules, are a reasonable approach that will result in fair opportunities for all users of rivers in Montana. The commission will consider any rule restricting nonresident uses in light of Conservation Force, Inc. v. Manning and other cases to determine whether the rule is allowed or prohibited.

COMMENT 5: One person commented on new II(8) (ARM 12.11.405(8)) which states that nonresidents should have reasonable and equitable opportunities compared to other recreational users to enjoy Montana's resources. This individual recommended that the word "equitable" be stricken from the rules because it implies the same, or 50%/50%. This person also thought that residents should have priority over nonresidents.

RESPONSE: New rule II(8) (ARM 12.11.405(8)) states that "reasonable and equitable" as applied to nonresidents means recreational use that fairly considers the interests of all types of recreational users, and is not intended to mean that each type of recreational user must have the exact same share of use in terms of the timing, amount, and location of use. The commission believes that the rule provides an adequate definition of "reasonable and equitable" and makes it clear that the use of the word "equitable" should not be interpreted to mean that nonresidents must be provided "equal" opportunities to enjoy Montana's resources. The commission believes that "Equitable opportunities" as applied to nonresidents implies "fair opportunities."

COMMENT 6: One person recommended that the rules include additional language that states "river service providers are not necessary or even desirable in all places." One person expressed serious concern with "crowding" rules because of their inherent subjectivity; but, if rules regarding numbers are thought necessary, all guiding should be banned.

RESPONSE: The commission points out that the River Recreation Advisory Council did not recommend that river service providers are not necessary or even desirable in all places. Nor did the council recommend that river service providers are necessary or desirable in all places. These two statements reflect the fact that people have different sets of values and interests when it comes to river recreation and the role of river service providers. The commission believes that the analysis and decision-making process identified in the rules and recommended by the council would provide an opportunity for the public to express their values and interests. The commission points out that the rules state that management plans need to provide opportunities for river service providers to

compete for the business of paying customers. The commission interprets this to mean that a management plan and its associated rules could not eliminate the river service provider industry on an entire river. The commission does believe that the rules would allow for the identification of river reaches where restrictions prohibit river service providers from operating, as long as there are other reaches of the river where river service providers have opportunities to compete for the business of paying customers. The commission emphasizes that rules that restrict or ration river service providers would be the result of an analysis and decision-making process that considers the conditions on a river and the interests of the public.

COMMENT 7: The commission received comments from people concerned about the impact restrictions could have on river service providers. Some people commented that they are concerned because the easiest person to restrict is the outfitter, and restrictions on outfitters in this state have increased over the years and inhibit their ability to operate. Some people commented that the rules will have a greater impact on guides and outfitters, that further restrictions will be placed on commercial operations while no restrictions will be placed on the general public's use of the river. They recommended that if the commission continues to place restrictions on commercial river recreation activities, it must also address the over-crowding from nonguided people.

RESPONSE: The commission believes that the rules in general and the analysis and decision-making process mandated by the rules would result in river recreation management decisions that are reasonable for all users of rivers in Montana, including river service providers. New rule II(9) (ARM 12.11.405(9)) makes it clear that river service providers are an important industry and that management process should encourage viable and diverse types of commercial services. The commission also points out that the analysis and decision-making process and the involvement of a citizen advisory committee is intended to yield river recreation management decisions that are based on the conditions present on a river and the interests of the public. The commission trusts that the analysis and decision-making process in the proposed rules will result in fair opportunities for all users of rivers in Montana.

COMMENT 8: One person commented that new rule II(9) (ARM 12.11.405(9)) where it states, "River service providers are an important industry and should be regulated," reflects the River Recreation Advisory Council's desire that all commercial activities on rivers are licensed or regulated to encourage quality industry standards that will promote public safety and professional conduct. This person believed that the phrase is not intended to suggest that river service providers "should be regulated" automatically within any river recreation scenario or management plan.

RESPONSE: The commission agrees that the use of the words, "should be regulated," in new rule II(9) (ARM 12.11.405(9)) does not imply that river service providers should automatically be restricted or

rationed on rivers in Montana. The commission does not agree that the use of the words, "should be regulated" only refers to the licensing of river service providers in order to establish quality industry standards. The commission agrees that establishing quality industry standards that promote public safety and professional conduct is something that should be pursued. Establishing these standards could help to prevent or alleviate social conflicts on rivers. The commission believes that the use of the words, "should be regulated," also implies that the department and a citizen advisory committee, when developing a river recreation management plan or recommending rules as a part of the analysis and decision-making process, should examine the characteristics of commercial use of a river within the context of overall use of the river. The conditions present on the river and the interests of the broad spectrum of users, including those of the river service providers, would collectively determine the extent that regulations are needed to ensure that commercial use occurs in a manner that is compatible with other types of noncommercial use, to provide opportunities for river service providers to compete for the business of paying customers, and to ensure that there are viable and diverse types of commercial services present. The "regulating of river service providers" would mean different things under different river recreation conditions and management scenarios.

COMMENT 9: One person commented on new rule II(9) (ARM 12.11.405(9)) which states "Management plans need to provide opportunities for river service providers to compete for the business of paying customers. Management processes should encourage viable and diverse types of commercial services." This person commented that, while being all for free enterprise and competition, this individual hopes that the department doesn't try to artificially create a balance of "diverse types" of services. This person stated that most guided rivers have already gravitated to a competitive situation where those river service providers who work the hardest, longest, and best reap the rewards of more business.

RESPONSE: Management plans would reflect the conditions on a river and the interests of the public, including the river service providers. With this in mind, the commission anticipates that planning processes under the new rules, when addressing the commercial component of use on a river, would lead to a management scenario where the types of services present reflect the public's demand for services. This would not preclude scenarios where there are multiple types of commercial services available on a river. It would also not preclude a scenario where there are one or just a few types of commercial services available on a river.

COMMENT 10: One person commented that outfitters believe that if the number of commercial users authorized to operate on a river is regulated, there may not be a need to ration river use days.

RESPONSE: The commission will ask the department to take this into consideration when developing a river recreation management plan or recommending rules to the commission.

COMMENT 11: The rules state that restrictions and/or a rationing and allocation system would be designed for an individual river based on the conditions on that river. The rules do not identify one set of restrictions and one type of rationing and allocation system that would be used on all rivers where restrictions and/or rationing is necessary. Some people commented that they agreed that restrictions and rationing and allocation systems should be tailored to each river and user group. Other people commented that these rules were supposed to give guidance for river planning and bring uniformity to all river plans. These individuals stated that citizen advisory committees would struggle with this decision in the future because the rules do not identify one approach or method for rationing and allocating use.

RESPONSE: When drafting the recommendations from which these rules were formed, the River Recreation Advisory Council considered the merits of establishing one set of restrictions and one rationing and allocation system for all rivers where it is necessary to restrict or ration use. The council recommended that, because conditions vary from river to river, it would be better for the rules to allow flexibility when designing restrictions or a rationing and allocation system for a river. The commission, like the council, realizes that the development of restrictions and the selection of a rationing and allocation system for a river could be challenging for a citizen advisory committee, the department, and the commission. The commission is hopeful that the outcome of this type of approach will result in decisions being made that accurately reflect the interests of the public and the characteristics of use on a river.

COMMENT 12: Some people recommended specific tools or actions to manage use on a river, such as restrictions on the number of launches allowed at a river access site or limitations on group size.

RESPONSE: The commission points out that the proposed rules are broad in nature and purposely do not specify the types of management tools that must be used on a river. Rather, the rules propose an analysis and decision-making process be used to identify the tools or actions that are appropriate for a set of river conditions. The commission agrees that there are a number of ways to manage use, and believes that it is important that the department and citizen advisory committees have flexibility when formulating management plans and tools. A river management plan that makes sense on the Beaverhead River may not be at all appropriate for a portion of Clark Fork River. The decision-making process outlined in the new rules will encourage the department and its citizen advisory committees to consider a number of aspects when formulating river management plans, including the ideas mentioned in the public comments.

COMMENT 13: The commission received a number of comments on the rules pertaining to the use of a nonfixed allocation system. Of those people opposed to the use of a nonfixed allocation system, some people commented that this type of system ignores the historical use of outfitters who have spent a lifetime building their business in Montana. Some people commented that a nonfixed allocation system would take away a recreation opportunity for a whole segment of the public that would have a difficult time entering a permit system. Some people commented that this type of allocation system might have merit for management on rivers that have overnight use where river users plan months in advance or on rivers where there are no river service providers, but they believe it would be devastating to service providers that book the majority of their trips within 48 hours of when the use occurs. The commission also received comments from people who support the use of a nonfixed allocation system. Some people commented that a nonfixed allocation system should be used for any rationed river because rivers and streams in Montana are a public resource, and it is not appropriate for the permits to be given to the river service provider. Some people commented that they disliked the fixed allocation system, such as the one used on the Smith River, because landowners along the river and those with the money to hire an outfitter can float the river most any time they want. They are concerned that the average Montanan has to apply for several years before they get a permit.

RESPONSE: The commission points out that new rule VIII(5) ARM 12.11.435(5)) states that if rationing is proposed, and it becomes necessary to allocate opportunities to use or conduct business on a river, the department, working with the citizen advisory committee, shall recommend an allocation system to the commission. The rule states that the department may consider all types of allocation systems including fixed systems, nonfixed systems, and variations of these two types. The commission believes that this rule, when combined with the rest of the rules, will enable the department and the citizen advisory committee to design an allocation system that is based on the recreational characteristics of a river, and a system that works for the various types of river service providers that operate there.

COMMENT 14: The commission received comments on new rule VIII(2) (ARM 12.11.435(2)) that state that when determining how a river should be managed, the commission shall consider management methods in sequential order, from least restrictive methods to most restrictive methods. Section (3) of this rule also states that the commission may deviate from this order under conditions or circumstances identified by the commission. This provision allowing the commission to deviate from the sequential order was viewed both negatively and positively. Some people commented that they support the sequential ordering identified in section (2) but are concerned that section (3) leaves a broad power to the commission and is contrary to the public's recommendation that an ordering process must be used, not just considered. Other people

commented that they do not support requiring the use of nonrestrictive, restrictive and rationing sequentially to address a problem. These individuals recommended that all options should be available to the department simultaneously to resolve the problem rather than allowing problems to linger while ineffective methods are exhausted. For this reason they recommended that the provisional language in section (3) is important and should remain a part of the rules.

RESPONSE: The commission points out that new rule II(3) (ARM 12.11.405(3)) reflects the River Recreation Advisory Council's recommendation that the public prefers to recreate on rivers without controls on their recreation experience. New rule VIII(2) (ARM 12.11.435(2)) two ensures that the commission shall seriously consider the use of less-restrictive management methods first in order to avoid placing unnecessary restrictions on the public. The provisional language in section (3) also ensures that the commission is not bound to the sequential ordering if it is clear that the use of less-restrictive methods would be ineffective and could result in conditions worsening.

COMMENT 15: One person recommended that the rules state that river recreation management rules should be adopted without termination dates. This person commented that continual re-adoption of rules leads to animosity among the competing parties, as shown on the Beaverhead and Big Hole rivers and that forcing plans to expire only leads to needless tinkering and animosity between competing interests.

RESPONSE: The commission will take this into consideration in the future when adopting river recreation management rules for individual rivers.

COMMENT 16: One person recommended that restrictions on use of a river should only apply to a very short period of time when use is at its highest level. Their explanation was that there is only about a six-week period of time when use is high, and restrictions are not needed beyond that time period.

RESPONSE: The commission will take this into consideration in the future when adopting river recreation management rules for individual rivers.

Topic: Transfer/Sale of River Use Days

COMMENT 17: Some people commented that they support the transferability of river use days to qualified buyers. They explained that without transferability there is no business to sell and therefore no incentive to invest in their business.

RESPONSE: New rule XI (ARM 12.11.450) proposes that the sale or transfer of a licensed or nonlicensed river service provider and the transfer of river use days shall comply with 37-47-310(4), MCA, and shall not be prohibited as long as all legal requirements are

fulfilled. According to 37-47-310(4), MCA, when a fishing outfitter's business is sold or transferred in its entirety, any river-use days that have been allocated to that fishing outfitter through the fishing outfitter's historic use of or activities on restricted-use streams are transferable to the new owner of the fishing outfitter's business. New rule XI (ARM 12.11.450) proposes that this requirement should also apply to nonlicensed river service providers. The commission believes the proposed rule should not interfere with a river service provider's ability to sell or transfer their business. The sale of river-use days separate from the sale of a business may be affected by recreational use rules on a river, e.g., the Big Hole and Beaverhead Rivers where there are no river service providers eligible to use separated river use days.

COMMENT 18: Some people commented on section (3) in new rule XI (ARM 12.11.450) that states that no property right attaches to the transferred use days. Some people commented that they are concerned about the commercialization of public resources and recommended that there be an additional rule that explicitly prohibits a river service provider from selling river use days. One person commented that a property right has attached if the commission limits the number of river use days available to a river service provider and allows that river service provider to sell them. This person recommended that if the goal is to make sure that no property right attaches to the use days, the state should make it so that only the river service provider who received the use days can use those days, and that they can't transfer them to someone else.

RESPONSE: New rule XI (ARM 12.11.450) is based on 37-47-310(4), MCA, and provides for the transfer of river use days when a river service provider is transferring or selling their business in its entirety. New rule XI (ARM 12.11.450) is consistent with the law in stating that the use of any transferred river use days is subject to change pursuant to rules adopted by the commission, and no property right attaches to the transferred river use days. It is the commission's interpretation that the statement, "No property right attaches to the transferred river use days," is for the purpose of clarifying that the use of river use days or the transfer of river use days from one river service provider to another does not establish a property right. The availability and use of those river use days is subject to change pursuant to rules adopted by the commission. The commission does not intend for new rule XI (ARM 12.11.450) to explicitly prohibit or allow the sale or transfer of river use days.

COMMENT 19: Some people commented that the State of Montana's Board of Outfitters should license all types of river service providers, not just those who provide angling services. They explained that having licensure requirements similar to the hunting and fishing industry would help ensure that all of the river service providers are properly licensed, insured and regulated. They commented that the health and safety of the public is probably

even more of a concern in a whitewater rafting operation than in a fishing operation. Some people requested that there be more rigorous licensing criteria established. They also commented that the data gathered during the licensing process would be useful. Some people recommended that the department be given the authority to license outfitters. Some people recommended that Montana not allow outfitters and guides from out of state to operate here.

RESPONSE: The commission points out that the proposed rules are for the purpose of addressing or preventing social conflicts on rivers and the issue of licensing river service providers is not within the scope of these proposed rules. Furthermore, the department does not have the statutory authority or responsibility for licensing outfitters and guides in Montana. The commission asks that comments of this nature be made to the Montana Board of Outfitters within the Department of Labor and Industry or to the Montana State Legislature.

COMMENT 20: Some people expressed concerns about the number of outfitters and guides licensed in Montana.

RESPONSE: The commission points out that the department does not have the authority or responsibility for licensing outfitters and guides in Montana. This authority and responsibility lies with the Montana Board of Outfitters within the Department of Labor and Industry. The department does have the authority to regulate use on rivers and streams that are legally accessible to the public. This includes the authority to regulate the number of outfitters and guides authorized to operate on a river or stream should this type of action become necessary.

Topic: Identifying Rivers Needing a Management Plan

COMMENT 21: One person commented on the methods the department would use to identify rivers in need of further analysis and planning. This individual recommended that "dissatisfaction triggers" be identified that would trigger the appointment of a citizen advisory committee and/or the development of a management plan.

RESPONSE: Currently, new rule IV (ARM 12.11.415) proposes that the department, using existing information, shall evaluate the social and biological conditions on rivers and identify those rivers where further analysis and planning may be needed in order to prevent or resolve social conflicts. In preparation for future river recreation management needs, the department developed a River Evaluation Form. The form asks regional supervisors and their staff members to evaluate and score the rivers in their region based on the frequency and significance of social or biologically driven recreation issues, problems and/or conflicts. The form then asks for information that describes why the evaluator assigned a river a particular score. Evaluators are then asked to identify what they think the department needs to do in the next two years to address the social or biologically driven recreation issues,

problems, and/or conflicts they listed and described for a particular river. They are asked to select one or more of the following responses:

A = Nothing (no action needed)
B = Conduct public meetings to begin identifying issues, problems and/or conflicts
C = Gather more data in an effort to better understand issues, problems, and/or conflicts
D = Establish a citizen advisory committee to begin a river management planning process

The evaluation form and process will be used to identify rivers where conditions might warrant further actions, such as the collection of data or the appointment of a citizen advisory committee to begin a river management planning process. The score assigned to a particular river would be similar to the "dissatisfaction triggers" mentioned in the comment above.

Topic: Stream Access, Stream Access Law

COMMENT 22: Some people recommended that the department use stream access as a management tool. They believed that maintaining and acquiring public access is a tool that can be used to disperse users.

RESPONSE: The commission agrees that maintaining and acquiring public access can be used to disperse users and that this tool might be appropriate for some rivers in the state. A citizen's Advisory Committee could consider this tool as a part of its analysis and decision-making process for a particular river.

COMMENT 23: Some people recommended that a statement be added to the rules to make it clear that the rules do not affect stream access rights.

RESPONSE: The commission recognizes that streams, rivers and lakes are public resources and that the public has a right to recreate on public water. This stream access right is part of Montana's Constitution. The right is subject to reasonable regulation to reduce conflicts, to protect the safety and health of the public, and to protect and preserve the natural resources and the public use and enjoyment of the public resource. The commission is committed to using its authority to regulate recreational use to enhance the public's use and to protect the resource without infringing upon or denying the public's right to use the resource. This is required by the constitutionally based stream access rights. A statement in these procedural rules is not necessary to recognize what cannot be ignored or denied.

COMMENT 24: One person commented that simple public access to our public resources must remain a top priority for the department, and

perhaps there has been too much emphasis on "making them pretty" with fancy campgrounds, launch ramps, picnic tables and fee stations.

RESPONSE: This recommendation will be directed to the department Fishing Access Site Program Coordinator.

Topic: Citizen Advisory Committees

COMMENT 25: In regard to the selection of citizen advisory committee members, one person recommended that the department work with Commissioner Mike Murphy on language to ensure there is equitable representation among the local citizens.

RESPONSE: New rule VI (ARM 12.11.425) provides that the director shall appoint members to citizen advisory committees that represent identified interests, both locally and statewide. Commissioner Murphy has expressed an interest in the methods that would be used to appoint people to a citizen advisory committee. His goals are to ensure that there is equitable representation of the affected interests and to ensure that the public views the appointed citizen advisory committee as credible. The commission will ask the department to include in the planning manual (see, new rule XII (ARM 12.11.455)) more detailed criteria for appointing people to a citizen advisory committee and ensuring equitable representation of the interest categories and committee credibility.

COMMENT 26: In regard to the composition of the citizen advisory committees, one person recommended that guides should have a place at the table because they have different viewpoints and different interests than those of outfitters.

RESPONSE: New rule VI (ARM 12.11.425) states that in considering appointments (to the citizen advisory committee) the director shall: (a) identify interests and stakeholders that will be affected by the proposed management plan or regulation; and (b) appoint members to the committee that represent the identified interests, stakeholders, and perspectives, both locally and statewide. The rule stops short of listing all the interests, stakeholders, and perspectives that might be affected by the proposed management plan or regulation. The decision to not include a list of affected parties is based on the premise that (a) not all of the parties would be affected and/or be present on each and every river; and (b) the department does not possess an exhaustive list of all the parties that might potentially be affected by a river recreation management plan or regulation. To attempt to include such a list in the rules could inadvertently result in the failure to include a potentially affected party. However, the rules make it clear that the director shall appoint members to the committee that represent the identified interests, stakeholders, and perspectives, both locally and statewide. The director could determine, for example, that guides represent an identified interest and provide a unique perspective and therefore should be appointed to a citizen advisory committee.

COMMENT 27: One person recommended that new rule II(6) (ARM 12.11.405(6)) be amended to include the following sentence: Membership on the citizen advisory committees will be made up of Montana residents.

RESPONSE: New rule II(6) (ARM 12.11.405(6)) is based on the recommendations of the River Recreation Advisory Council and states "Participation of all interested parties is vital when developing management plans." Experience has shown that failure to include all the interested parties when developing a management plan or making key decisions can result in inequitable decisions being made that are unsustainable over time or decisions that do not resolve the conflict. Rather, experience has shown that inclusion of the various interest categories, including resident and nonresident interests, is an important ingredient to success. It can be challenging for a nonresident to participate on a citizen advisory committee and therefore it is sometimes necessary to select a representative for this interest category that resides in the state and can attend the meetings.

COMMENT 28: Some people recommended that there be term limits in place so that people don't serve on a citizen advisory committee for too long. They said the rules include language stating how committee members would be replaced if they are not doing a good job.

RESPONSE: More specific information regarding the citizen advisory committees would be included in the planning manual (see, new rule XII (ARM 12.11.455)). The commission believes that it would not be necessary for the planning manual to identify term limits for the citizen advisory committee members. The citizen advisory committees would be ad hoc committees appointed for the purpose of assisting the department and the commission in the development of a river recreation management plan and/or rules necessary to implement the plan. The committees would disband upon completing their work, which should address concerns about individuals serving too long on a committee. As for the recommendation that the rules include language stating how committee members would be replaced if they are not doing a good job, the department proposes that if this situation arises the committee members themselves should decide on how to address the problem. This would give the committee ownership in making what could be a critical decision.

COMMENT 29: Some people commented that having the department director appoint the members of the citizen advisory committee could be detrimental to the credibility of the process.

RESPONSE: The department was concerned about this issue when it appointed the members of the River Recreation Advisory Council, and thus it made a decision to solicit nominations from the public. The director then appointed members from the nominations that were received. This type of nomination and appointment process gave the public an opportunity to influence the composition of the committee

and it ensured that the director would be able to appoint a committee that was representative of the interest categories. The proposed rules currently do not mention any public participation in the selection of committee members. In order to address this concern and ensure that the public has an opportunity to participate in the appointment of a citizen advisory committee, the commission has amended new rule VI(2) (ARM 12.11.425(2)) to include the words "through a public process."

COMMENT 30: One person commented that local concerns are important, but in the case of some of our more popular fishing rivers it is clear that the user group is predominantly not local, and thus the largest and most directly affected river use constituent group might be underrepresented if participation is limited to local interests. This individual recommended revising the citizen advisory committee selection and representation process.

RESPONSE: New rule VI(2)(b) (ARM 12.11.425(2)(b)) states that "In considering appointments...the director shall: (b) appoint members to the committee that represent the identified interest, stakeholders, and perspective, both locally and statewide." The words "both locally and statewide" make it clear that the citizen advisory committees would not be limited to local interests.

COMMENT 31: Some people recommended that the number of people representing a particular interest category on a citizen advisory committee should correlate to the number of people overall in that interest category. They commented that there are more nonguided river users than there are outfitters in the state, and therefore there should be a greater number of committee members representing the nonguided interests.

RESPONSE: The proposed rules do not provide details on the composition of a citizen advisory committee or the number of people who would represent various interest categories. The commission will notify the department that the planning manual (see, new rule XII (ARM 12.11.455)) needs to provide general guidelines on the composition of citizen advisory committees but that the exact composition of a committee would be determined on a case-by-case basis. Proportional representation is one method that could be used. Having a greater number of representatives could be an advantage to an interest category if decisions are made through a vote. The number of representatives from each category becomes less of a factor if the committee is using interest-based problem solving and consensus-based decision-making, which is the approach recommended by the River Recreation Advisory Council.

COMMENT 32: Some people commented on whether or not a citizen advisory committee should be required to use a consensus-based process when developing its recommendations and making decisions. Some people recommended that the citizen advisory committees not be required to use consensus in their deliberations. One person thought that the River Recreation Advisory Council seemed tied by

the consensus process. Other people recommended that the citizen advisory committees should use a consensus-based process. One person recommended that the rules should state "Citizen advisory committees shall strive for consensus. If consensus cannot be reached, differing viewpoints will be forwarded to the Commission for their consideration in their decision-making process and recorded in the record of decision."

RESPONSE: The proposed rules do not identify a method that must be used by the citizen advisory committees to develop recommendations and make decisions. The River Recreation Advisory Council recommended that the citizen advisory committees use interest-based problem solving and consensus-based decision-making. The commission will ask the department to include in the planning manual (see, new rule XII (ARM 12.11.455)) the Council's recommendation and information and guidelines on interest-based problem solving and consensus-based decision-making.

COMMENT 33: People offered differing opinions on whether or not a citizen advisory committee should be involved in reviewing, re-adopting or amending a management plan or rule. Some people commented that the proposed rules only refer to the citizen advisory committee's involvement on the front end of the process when the management plan is first developed. They recommended that the words "or amending" be added after the word "adopting" in new rule VI(1), and after the word "developing" in section (2). Other people commented that advisory committees are time consuming, often contentious, and expensive. For this reason, they recommended that when an existing plan is being renewed, the commission should consider public comment and not require an advisory committee to renew an existing plan. They recommended that the commission should only convene a citizen advisory committee after public comment indicates a need and conditions on the river have changed substantially from initial plan adoption.

RESPONSE: There can be very different circumstances when the commission and department are considering changing a management plan or the commission is considering amending the river recreation use rules on a river. Sometimes the changes will be minor, sometimes the changes or amendments can be sufficiently informed by the product of the original citizen advisory committee, and sometimes the changes to be considered will be significant and not adequately covered by the committee's work. The commission has decided to address the issue of changes or amendments by amending section (2) of new rule VI (ARM 12.11.425) to require the establishment of a citizen's advisory committee whenever the "proposed amendments or changes are anticipated to be of significant enough interest to the public to benefit from the participation of a citizen advisory committee."

COMMENT 34: One person recommended that new rule II(6) (ARM 12.11.405(6)) be amended to say that "Individuals appointed to serve on a citizen advisory committee, river users, and those affected by river recreation shall be full and integral partners in

the development of management plans or rules." The current version of the rule uses the word should instead of shall.

RESPONSE: The commission has decided to amend the rule to say "shall be full and integral partners in the development of proposed management plans or rules." These wording changes emphasize that citizen advisory committees will have a role in the development of proposed management plans or rules. The use of the word "proposed" recognizes that the department and commission are the final decision-makers for management plans, and the commission adopts river recreational use rules.

COMMENT 35: One person commented that one of the challenges would be initiating a planning process in places like the Beaverhead and the Big Hole rivers where there are already rules in place and people are entrenched on the issues. This person predicted that in these types of situations it would be difficult to recruit people to citizen advisory committees who are open minded and willing to take a fresh look at the issues.

RESPONSE: The commission recognizes that there might be additional challenges when initiating a planning process on rivers where there are management plans and/or rules already in place. The commission will ask the department to strive to appoint citizen advisory committee members who are committed to resolving the conflicts and identifying solutions that meet the interests of a diverse public.

COMMENT 36: One person recommended that the rules include a mechanism to ensure that public input is not restricted to the citizen advisory committee (see, new rule V (ARM 12.11.420)). New rule V simply says, "public input" without adequately explaining the mechanics of giving that input. A citizen should be able to directly contact the department with suggestions. This person suggested that the rule say, "...public input with the department accepting comments in both written or electronic form."

RESPONSE: The commission thinks the recommended language is not necessary because the MAPA process already requires that the commission accept public comments in both written and electronic form. Section (3), new rule V (ARM 12.11.420), states that "[t]he commission shall adopt river recreation rules according to MAPA." MAPA requires agencies to give public notice of intended rulemaking actions, to conduct public hearings, receive public oral, written and electronic comment, and consider public comment as a part of the rulemaking process. MAPA also provides for an interested persons list (see, rule proposal notice, MAR Notice Number 12-307, paragraph seven) for people who are interested in a given topic to receive notice whenever rulemaking occurs on that topic. Additionally, new rule V(1)(b) (ARM 12.11.420(1)(b)) states, "When concurring in a management plan or when adopting, amending, or repealing rules for a river, the commission shall consider...public input."

COMMENT 37: One person stated that it is important that when rules are adopted they are adopted in a consistent manner. This person thought that the department shouldn't appoint a citizen advisory committee for one river and not appoint one for another river.

RESPONSE: New rule VI(1) (ARM 12.11.425(1)) states "The department shall establish a citizen advisory committee when developing a river recreation management plan or when recommending river recreation rules to the commission." Therefore, a citizen's advisory committee will be appointed when river management plans are developed or when the department recommends river recreation rules to the commission.

Topic: Data/Information

COMMENT 38: Some people commented on the importance of having good data when developing a management plan and/or rules for a river. Some people commented that there are a lot of inaccurate perceptions about conditions on rivers, what the problem is, who is using the river, etc., which is why it is so important to have good data. Some people expressed concern over new rule V(2) (ARM 12.11.420(2)) that reads "There is not a requisite amount of information that the commission shall consider before it is able to make a river recreation management decision." Some people recommended the rules include a minimum threshold for data backed by a concerted effort to develop funding sources for this vital aspect of management planning. Another person recommended that the rules be reworded to make it clearer that regardless of the amount or types of data considered, the commission would still need to consider MEPA, MAPA, the citizen advisory committee process, etc. before making a decision.

RESPONSE: The commission agrees that river recreation information can be beneficial when developing a river recreation management plan and/or rules. New rule V (ARM 12.11.420) requires the commission to consider the best available biological, social, and economic data before the department when concurring in a management plan or when adopting, amending, or repealing rules for a river. This rule also states that there is not a requisite amount of information the commission shall consider before it is able to make a river recreation management decision. Recreation conditions vary from river to river, and therefore it would be difficult to establish a minimum threshold for data that would suffice for all rivers. Furthermore, experience has shown that some people who are dissatisfied with a river recreation management decision will find fault with the data regardless of how much data is available. The commission believes that the proposed rules, in numerous places, make it clear that the department and the commission would be collecting and assessing river recreation information when developing management plans and adopting rules.

COMMENT 39: One person commented that the term "best available information" in new rule IV(4)(b)-(d) (ARM 12.11.415(4)(b)-(d)) is vague unless a strict legal definition is intended or spelled out.

This person wondered if the term "best available data" means whatever is available at the point of decision-making, however scant or insignificant the data. Some people commented that this term could enable the commission to make decisions based on very little data. One person recommended that if the department doesn't have information it should not make any decisions about use of a river.

RESPONSE: The use of the term "best available information" is intended to mean that the department and the commission will consider the best information available at the time a decision is made. The department and the commission must make a concerted effort to obtain and consider the best data available. The term "best available data" is commonly used in environmental policy and law and enables the decision-maker to make the best decision at the time, rather than making no decision at all. If the default, when a specified "quantity" of data is not available, is to a de facto prohibition on making any decision, the public and resource could be denied the benefits and protections of needed regulation.

COMMENT 40: One person recommended that the department develop a standard, state-approved "river use survey," and the department should be required to gather recent and sound data when, or even before, social conflicts come to a head.

RESPONSE: The commission will ask the department to examine its data collection methods and consider ideas such as a standardized, state-approved river use survey.

COMMENT 41: Some people recommended that river service providers be required to keep accurate records on the number of clients they serve and information on the timing and location of the use.

RESPONSE: The department already requires river service providers to keep records on the Alberton Gorge and the Smith River. Since the use of rivers varies so widely throughout the state, the commission thinks that the decision to require river service providers to keep records should be made on a river-by-river basis, depending on the conditions present and the information that is needed. The department can also rely upon river use data submitted to the Board of Outfitters.

COMMENT 42: One person recommended that the rules be specific regarding what data are used. This person recommended that the department angling pressure data be used as the baseline data, and additional data could be considered based on validity.

RESPONSE: Because rivers vary in terms of the types of recreation that are present, it would be difficult for the rules to be more specific on the data that should be considered. On some rivers, for example, angling is one of several types of use that occurs, and therefore it would be difficult to establish the angling pressure data as the baseline data.

COMMENT 43: Another person recommended that the department use volunteers to accomplish survey work, collection of fees, etc.

RESPONSE: While defining the duties of volunteers is beyond the scope of this rulemaking, the commission will direct this comment to the department's Responsive Management Unit.

COMMENT 44: One person cautioned that it is one thing to set up a permit system, but another thing to set up a monitoring system. In this individual's view, the challenge is in first acquiring baseline data and then setting up a monitoring system that is consistent over time so that comparisons can be made and trends identified.

RESPONSE: The commission agrees that acquiring baseline data and developing a monitoring system for the purpose of examining trends can sometimes be challenging. The commission shall ask the department to take this into account when working on individual rivers.

Topic: Tourism Economy

COMMENT 45: Some people commented on the relationship between river recreation management and the state's tourism-based economy. They advised the commission to think about the state's economy as it moves forward and consider the potential impact river recreation decisions might have on the economy. Some people commented that river recreation decisions that affect nonresidents could result in potential visitors choosing not to recreate in Montana. Some people commented that river recreation decisions that restrict the ability of outfitters to conduct business could have negative impacts on local economies.

RESPONSE: The commission is sensitive to the important role rivers play in the state's tourism economy. It is for this reason that the proposed rules require the department and the commission to consider economic data when developing a river recreation management plan and/or rules. The prevention or resolution of social conflicts on rivers should benefit residents, nonresidents, and outfitters. Just as unreasonable or capricious restrictions on nonresidents and outfitters could negatively impact the tourism economy, failure to address social conflicts could result in a dissatisfactory experience for visitors and have a negative impact on the tourism economy. The inclusion of tourism, nonresident, and outfitting interests on the citizen advisory committees will help to ensure that river recreation management decisions reflect the many interests and perspectives that are involved, including those related to tourism.

Topic: Displacement Issues

COMMENT 46: Several people recommended that the department and the commission consider the displacement factor when developing a river recreation management plan and/or rules. Some people commented that

if the commission restricts use on a river, people might choose to recreate on a different river to avoid the restrictions and that this could lead to crowding on the unrestricted river. Inadvertently the commission would have caused the crowding problem to shift from one river to another. Conversely, some people commented that if the commission doesn't restrict use on some of the high use rivers, people will become disgusted with the conditions and choose to go to a different river, potentially creating crowding problems there. Another person recommended that the commission purposefully leave some high-use rivers unregulated. This person believes that there are some popular rivers where people are accustomed to seeing lots of people, but they continue to go there because the fishing is good. This person believes that if the commission restricts use on these popular, high use rivers, the public would go to other rivers instead, which could lead to crowding problems on rivers where there currently is no problem. One person commented that social conflicts are self-regulating and that people will find places to recreate that meet their needs and will avoid places where conditions do not meet their needs.

RESPONSE: The commission recognizes that its decision to restrict use on a river, or its failure to address conflicts, could influence river use and lead to displacement. The commission agrees that a river recreation planning process must consider how management decisions, or lack thereof, might influence use of other rivers in the state. The commission will ask the department to include this issue in its river recreation planning manual (see, new rule XII (ARM 12.11.455)). The commission will also ask the department to identify methods for surveying displaced anglers in order to gain a better understanding of their decisions.

Topic: Commission/Department Authority

COMMENT 47: Several people commented that they are concerned about new rule III(8) (ARM 12.11.410(8)) that states, "Nothing in this subchapter shall prevent the department, with the concurrence of the commission, from amending or repealing a management plan and the commission from amending or repealing rules as needed." Some people commented that this rule gives the department and the commission too much power to do "basically whatever they please." One person commented that this would allow the commission/department to avoid going through a MAPA process when amending a management plan and/or rules for a river. This person recommended that the rules be changed to make it clear that the MAPA requirements also apply when amending a plan and/or rules, which would require that the commission provide rationale and justification for its rules.

RESPONSE: The intent of section (8) of new rule III (ARM 12.11.410) is to make it clear that the initial management plan and recreational use rules on a river are not permanent. They may be amended or repealed as circumstances change and new data or information are available. Public input, including satisfaction or dissatisfaction with how the initial plans and rules are working or

not working, may also lead to adoption, amendment or repeal of rules. Section (3) of new rule V (ARM 12.11.420) requires that river recreation rules be adopted under MAPA. Adopting rules means both the adoption of initial rules and the adoption of subsequent rules, such as amendments or "addition" rules. All versions of river recreation rules must be adopted under MAPA. The commission is revising section (1) of new rule VI (ARM 12.11.425) to provide the full application of these rules, including the use of a citizen advisory committee, to any proposed amendments or changes to plans or rules that are of significant interest to the public. (See, Comment 33 and Response.)

Topic: Planning Manual

COMMENT 48: One person commented that if it is important that the planning manual referred to in new rule XII (ARM 12.11.455) provide direction to the department, it is also important that the department be forced or mandated to give consideration to these directions. This person commented that it is important that the elemental details of the River Recreation Advisory Committee recommendations to disappear into a planning manual on a forgotten shelf.

RESPONSE: The commission agrees that the recommendations of the River Recreation Advisory Council should be considered when developing a river recreation management plan and/or rules for a river. The commission added language to new rule XII (ARM 12.11.455) to clarify that citizen advisory committees must consider the river recreation planning manual as they do their work.

COMMENT 49: One person recommended that the department develop a playbook of proven methodologies that work when it comes to addressing social conflicts on rivers. This individual said that the department should include this information in the planning manual so that the citizen advisory committees know what has worked on other rivers.

RESPONSE: The commission agrees and shall ask the department to include information on river recreation management tools that have been used on other rivers for the purpose of preventing or resolving social conflicts. The commission does not believe it is necessary to include this request in the rules.

Topic: Natural Resource Protection

COMMENT 50: One person recommended that new rule II (ARM 12.11.405) include a statement saying that the highest priority is to provide protection for natural resources, similar to new rule III(1) (ARM 12.11.410(1)).

RESPONSE: New rule II(4) (ARM 12.11.405(4)) already includes a statement that says, "The quality of the river resource should be protected as the first and foremost priority."

COMMENT 51: One person commented that it is of great importance that the department's fisheries division has full authority to regulate all aspects of fisheries management. This person recommended that the commission add a rule stating that river recreation management plans shall be crafted to comply with fisheries management plans and not vice-versa.

RESPONSE: The commission agrees that river recreation management plans should comply with fisheries management plans and believes that the new rules ensure that this takes place. New rule IV(4) (ARM 12.11.415(4)) states that the department shall develop management plans and recommend rules to the commission based on the best available information, including biological information. Biological information includes fisheries plans and the information that these plans are based on. Furthermore, the rules require the department to conduct an environmental analysis according to MEPA when developing management plans, which would include examining fisheries issues. In addition, new rule III (12.11.410) states that the highest priority of a management plan is providing protection for resources, including fisheries.

COMMENT 52: One person commented that the rules fail to mention the importance of water quantity in a river. This person stated that quantity of water has a big influence on river recreation because if you don't have enough water, you end up with a lot of social impacts.

RESPONSE: The proposed rules are for the purpose of addressing or preventing social conflicts on rivers. The commission agrees that water quantity can influence recreational opportunities and that undesirable stream flows, such as drought, can lead to or compound social conflicts. The rules would require the department to conduct an environmental analysis according to MEPA and water quantity issues, where relevant, would be considered.

COMMENT 53: One person commented that the rules propose to restrict users but do nothing to protect resources. This person thought that if the commission is going to restrict people on rivers, it should protect the resources.

RESPONSE: The commission agrees that providing protection to resources is very important and believes the rules make it clear that providing protection to the resources is the highest priority. The commission also points out that the department has a competent fisheries and wildlife division that provides protection to the resources in and along rivers.

COMMENT 54: One person recommended that the department work with other states to improve their fisheries so that people won't be so inclined to come to Montana.

RESPONSE: The commission will forward this comment to the department's fisheries division staff that communicates with fisheries managers in other states.

COMMENT 55: Some people commented that restoration of some of the more marginal rivers in the state (Clark Fork, Jefferson, etc.) could alleviate some of the pressure on the more heavily used rivers. One person commented that the solution does not lie in allocating or rationing recreational use, but in enhancing and increasing angling opportunities across the state.

RESPONSE: The commission agrees that restoration of fisheries habitat in rivers where habitat is marginal could lead to more angling opportunities and alleviate angling pressure on existing streams where use is high. The fisheries department has staff working on habitat restoration, and the commission supports these efforts.

Topic: Landowner Issues

COMMENT 56: One person commented that there are a lot of landowners in the state who don't want to see anyone recreating on the rivers and that they are going to use these rules as a tool to try to keep people off the river.

RESPONSE: The analysis and decision-making process and the citizen advisory committee are for the purpose of ensuring that everyone's interests are considered when making river recreation management decisions. The commission believes that this is a fair and reasonable process that will not lead to people taking unfair advantage of others.

Topic: Wild and Scenic River Program

COMMENT 57: One person recommended that the Wild and Scenic River Program is the appropriate program for addressing social conflicts and resource concerns on rivers. This person stated that the commission and department's efforts are duplicative and unnecessary.

RESPONSE: The commission recognizes that the federal government can use the Wild and Scenic Rivers Program to manage recreation on designated rivers. The commission points out that there are two rivers in Montana designated as "wild and scenic." However, the commission has received hundreds of comments regarding problems on some rivers in the state. Citizens want these problems resolved. The congressional designation process can take considerable time, and the department already has the authority to address social conflicts on rivers. Through experience, the commission has found that the people experiencing the problems and the interest groups affected are often the best people to design solutions to solve the problems. The commission thinks that the department can complement the federal government's efforts on Wild and Scenic Rivers.

Topic: Education

COMMENT 58: One person recommended that an education program be incorporated into the licensing program and that the program should educate people about river etiquette.

RESPONSE: New rule II(3) (ARM 12.11.405(3)) states that educating the public about river recreation issues can lead to modified behavior on rivers and the department can use education as a nonregulatory method to address social problems on rivers. Incorporating an education program into a licensing program is beyond the scope of these rules, but the commission will forward this idea to the department's management staff.

Topic: Aviation

COMMENT 59: One person commented that aviators are interested in recreational opportunities that would involve the placement of an airstrip on state lands adjoining a river.

RESPONSE: When implementing these rules, the director would appoint members to the citizen advisory committee that represent the identified interests, stakeholders, and perspectives, both locally and statewide. The commission encourages aviators and other river recreation enthusiasts to get involved in river recreation management processes.

Topic: Coordination with other agencies

COMMENT 60: One person recommended that the department and commission work with other state and federal agencies when developing river management plans. One person commented that the commission's decision to restrict or ration river use could be in conflict at times with a federal agency's permit that already restricts or rations use on some Montana rivers and recommended that the commission take into consideration any applicable tribal, state and federal permits. One person commented that enforcement and compliance issues could get unduly complicated. One person who is an outfitter commented that outfitters do not wish for redundant regulation and that currently they are regulated by the Forest Service and the National Parks Service. This person said that to have another agency implementing recreation rules would be very confusing.

RESPONSE: The commission agrees that it is important to work with other state and federal agencies when developing river recreation management plans and believes that these rules provide for that cooperation. New rule II(10) (ARM 12.11.405(10)) states that partnerships with other agencies that lead to improved management of the river resources and better services to the public are encouraged. New rule III(6) (ARM 12.11.410(6)) states that when possible, the development of management plans must be coordinated with the planning processes of both state and federal agencies having jurisdiction over a river or reach of river. The commission

intends that these rules also encourage partnerships with tribes having jurisdiction over a river or reach of river and has added language to new rule II (ARM 12.11.405) and new rule III (ARM 12.11.410) to reflect this fact.

Topic: River Recreation Advisory Council Guiding Principles

COMMENT 61: One person recommended that the River Recreation Advisory Committee (RRAC) Guiding Principles be made a requirement for any and all individual river plans that address social conflicts for the reason that within the RRAC process, the Guiding Principles emerged as the most comprehensive expression of the will of the council.

RESPONSE: The commission agrees with the importance of the Guiding Principles and points out that the principles are reflected throughout the rules. The commission also points out that new rule XII(1) (ARM 12.11.455(1)) states that the river recreation management planning manual will incorporate the recommendations of the River Recreation Advisory Council as expressed in their final report of July 10, 2003, including the guiding principles.

Topic: Pilot Project

COMMENT 62: One person expressed concern that the commission has not selected a river to try this process before going forward.

RESPONSE: The commission points out that it will monitor the implementation of these rules on rivers. The commission can make changes if necessary.

Topic: Fees, Program Cost

COMMENT 63: Some people provided ideas for generating revenue to help pay for river recreation management efforts. One person recommended that the commission consider charging a launch fee at access sites in order to generate money for the river recreation management program. One person recommended that the commission consider requiring nonresidents to put in for a permit to fish and use the money to pay for river recreation management. One person recommended that the cost of nonresident licenses be increased substantially to help pay for Montana infrastructure. One person recommended that there be a substantial tax on fishing boats and that professional guides and private citizens pay the revenue to the department. One person recommended a head tax on any person who floats in a raft controlled by a guide. One person commented that so far it has been anglers' dollars that have paid for river recreation management efforts and that in the future the commission should examine ways for non-angling interests to help pay for the program. Some people recommended that non-angling recreational floaters, such as rafters and kayakers, pay a use rate similar to what the angler pays for a fishing license. These individuals thought that monies collected go to river and stream improvement. One person recommended there be a tag for all watercraft that use a

waterway in the state of Montana and that the monies collected be earmarked for waterway upkeep and improvement and water safety. One person commented that the basic need is for access, and expenditures to ensure simple access (not overly-developed) should supercede all other expenditures. For this reason, this person expressed opposition to fees to access "their own land." One person commented that it is wrong that people who use the Smith River pay more in fees than it costs to regulate the river. This person does not want to see the river recreation management program become a way to raise fees for the department in the future. One person recommended that the department, the commission, and the Citizen Advisory Council should make every reasonable effort to determine how much it will cost the department to implement and enforce a new management plan.

RESPONSE: The commission appreciates the suggestions for ways to generate revenue for river recreation management and will ask the department to consider these ideas in future strategic planning efforts. The commission also recognizes that taxation is a sensitive topic in the state of Montana, and any effort to generate money from new fees should be thoroughly evaluated for its merits. Most of the ideas proposed would require legislation to implement.

Topic: River-Specific Comments

COMMENT 64: A number of people provided specific comments on individual rivers.

Some people commented that they disagreed with the rule proposal notice's description of use on the Beaverhead and Big Hole rivers from about 1995 to 1997. One person commented that the rule proposal notice fails to tell readers why people showed up on these two rivers during this time period and what has happened since 1997. These people recommended that the public should have current information. Some people commented that there are already rules for the Beaverhead and Big Hole rivers and thought that it is not necessary to start over again once the statewide rules are adopted.

One person expressed support for the proposed rules but was concerned about the slowness of the process. This person commented that the need in the Bitterroot Valley is more than evident and requested that the commission please do what it must do and get on with it. This person also stated that it may already be too little too late. A Hamilton resident expressed opposition to implementing management rules for the Bitterroot or other rivers in Western Montana because this individual believes they are not needed.

One person commented that within the last four or five years there has been a dramatic and disturbing change in the amount of motorized use on the Clearwater River. This individual expressed concern about the high-speed ski boats using the river and the danger to public safety and recommended that there be no wake zones on small rivers like the Clearwater.

One person recommended that, because of the way the Madison and Yellowstone are divided up with access sites, parts of the rivers could be closed to float fishing during the week and open for wade fishermen only. One person commented that Three Rivers Park is a new concept and vision for river access for river recreation. One person commented that on the lower Madison River this summer there has been an incredible increase in floating and fishing use. This person said that parking situations on the highway are creating a hazard and recommended that if it ever comes down to permitting, fishermen and floaters need to be treated equally because both sectors of use are contributing to the problem. One person who has lived in the Madison Valley for 18 years said something needs to be done about the fishing pressure on the Madison River. This person said that the river looks like an interstate highway with bumper-to-bumper drift boats. Because of this overcrowding, this individual has not floated the river this year. One person commented that there is too much fishing pressure on the Madison River around Ennis from the salmon fly hatch (late June) until mid-September. This person stated that this fishing pressure is excessive from both a recreation experience point of view and from the impacts on the fish resource. This person thought that the angling public would accept restrictions on float access to the river. One person recommended that the commission extend the fishing season on the Madison in order to spread use out over the entire year. One person recommended that the commission adopt regulations to control overcrowding on the upper Madison because there are too many boats and people there. Because of these conditions, this person has stopped floating or wading there. The same person also commented that conditions on the Yellowstone are approaching those on the Madison. One person commented that the biggest concern continually expressed by fellow anglers is that the number of anglers (primarily nonresident and guided anglers) has increased to a level that the resident anglers find the solitude of fishing (primarily wade fishing) has been compromised, and the competition from float anglers is unacceptable. This person specifically mentioned rivers such as the Madison and the Yellowstone, and in more recent years, the Big Horn and the Missouri.

One person commented that there is quite a bit of animosity between outfitters/guides and the local citizenry on the Missouri River, from Holter Dam to the Dearborn River and that it is a known fact that the river is too crowded in this area. Some people commented that they are concerned about the use of motorboats and personal watercraft on the Missouri River in Great Falls. They commented that these types of use have increased significantly, and there are public safety and noise issues. They recommended more enforcement of the rules.

One person commented that Rock Creek is not doing well. This person said both the numbers of fish and the size and quality have gone down noticeably while the fishing pressure and number of boaters has gone up. This person recommended that the department,

the Forest Service and Five Valleys Land Trust need to do something soon or Rock Creek would be lost.

One person commented that even the though the statewide rules propose that the department would use the least restrictive method possible to get the job done, on the Smith River the department restricts use before the river flows start to rise and continues these restrictions almost three months after flows rise. This individual said that if the commission is going to apply these rules to the Smith River, it is going to have to cut down on the regulations there. One person commented that the Smith River is a good program, that Joe O'Neill does a good job there, and there seems to be a low level of conflict. This person recommended that this type of program could be implemented on other rivers, e.g., limit the number of launches per day. One person who used to float the Smith River before permitting said the experience was gross. It is a much finer experience now.

One person who has lived on the Stillwater River for 30 years and observed lots of changes said that use is getting out of hand, and the fish population is suffering. This individual recommended that now is the time to stop commercial rafting trips and slow down private rafters.

RESPONSE: The commission appreciates the public's interests and concerns and points out that these comments will be useful for future river recreation planning efforts. The commission will refer these comments to the department and future advisory committees designing management plans on these rivers.